

Internal Revenue Service
Appeals Office
P.O. Box 24018
Fresno, CA 93779-4018

Date: **SEP 03 2019**

TAYLOR AMAREL
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Department of the Treasury

Person to Contact:
Theresa Carrillo
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Fax: (855) 223-7117

Refer Reply to:
AP:EX:FRC:TC

In Re:
Freedom of Information Act
Tax Period(s) Ended:
F19189-0065

Dear Taylor Amarel:

This letter is in response to your August 16, 2019 Freedom of Information Act (FOIA) appeal of the August 6, 2019 response of the Disclosure Specialist to your July 8, 2019 FOIA request.

You requested keyword search of emails sent by a Criminal Investigation (CI) employee. You stated that the request is for the period of January 1, 2016 through January 1, 2018. You stated that the request is to ignore newsletters, "junk" or spam, and to redact all personal information and no attachments. You stated that a similar request under FOIA number F18113-0042 was processed and records provided. You stated that you are taking the position that if the case F18113-0042 was processed this request should be processed as well.

The Disclosure Specialist stated that the scope of the request extends to documents, to the extent that any exist that consist of, or contain the return information of a third party, therefore, such record to the extent that they exist, would be confidential and may not be disclose unless specifically authorized by law. The Disclosure Specialist cited FOIA exemption (b)(3) in conjunction to Internal Revenue code (IRC) §6103. The Disclosure Specialist that when a person is requesting record pertaining to another person's or businesses the requester shall furnish a properly executed power of attorney, Privacy Act consent, or tax information authorization as appropriate. The Disclosure Specialist denied the request in full.

You submitted an appeal of the denial of records. You stated in your appeal that the text within the requested records may contain personal information, however, it does not adequately justify the withholding of the records and the IRS is obligated to redact the personal information and to grant a partial release of the documents. You stated that you have requested email from a government email account therefore at an absolute minimum the emails should be partially redacted. You stated that since the FOIA

request of F18113-0042 was processed and documents released, you are requesting that the IRS redacted the third-party information and a release of records on this request as required by law. You are also requesting that IRS provide the number of records (pages) that have satisfied the keyword search and the FOIA log for this request.

Appeals responsibility concerning the appeal of FOIA cases is limited to a de novo review to ensure the documents withheld or redacted for the specific requester and request, and the denied documents fall within the FOIA exemption(s) cited. We also ensure an adequate search for documents was performed and ensure that the Disclosure Specialist met the requirements of the FOIA.

We have reviewed the response of the Disclosure Office and have determined that it is appropriate under the circumstances. We concur that the documents requested, if any exist would consist of third-party documents. we sustain its redaction under FOIA exemption (b)(3) in conjunction with Internal Revenue Code § 6103. The information you are seeking is the return information of a third-party taxpayer. "Return information" is defined in I.R.C. § 6103(b)(2)(A) as

a taxpayer's identity ... or any other data, received by, recorded by, prepared by, furnished to, or collected by the Secretary with respect to a return or with respect to the determination of the existence, or possible existence, of liability [under the Internal Revenue Code]....

To the extent that such information exists, the Service is prohibited under I.R.C. § 6103(a) from providing you with a copy of that information. Section 6103(a) provides

that returns and return information are confidential. FOIA exemption 3 provides that the disclosure provisions of the FOIA do not apply to matters that are

specifically exempted from disclosure by statute ... provided that such statute (A) requires that the matters be withheld ... in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld.

Exemption 3 is being asserted in conjunction with I.R.C. § 6103(a) to withhold any third party return information. Section 6103 of the Internal Revenue Code has been determined to be an exemption 3 statute. Church of Scientology v. IRS, 484 U.S. 9 (1987).

The FOIA grants you the right to information and documents as requested through the request received and the authorities provided at the time of the request. Since the documentation you are requesting may contain third-party information, you must provide proper authorizations to receive the documentation. We cannot release documentation based on another FOIA case that is similar in nature. The Disclosure Specialist correctly determined that if any documentation, if it exist, would contain third-party information and you would need to provide proper authorization.

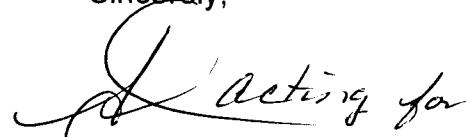
You requested a FOIA log or/and index of the documents that contained the keyword. The FOIA does not entitle a requester to receive an index or log during the administrative process as the courts do not require the submission of an index prior to the time when a dispositive motion is filed. See, e.g., *Edmond v. U.S. Attorney*, 959 F. Supp. 1, 5 (D.D.C. 1997) (rejecting, as premature, request for Vaughn Index when agency had not processed plaintiff's request), *Tannehill v. Dept. of the Air Force*, No. 87-1335, slip op. at 1 (D.D.C. Aug. 20, 1987) (noting that standard practice is to await filing of agency's dispositive motion before deciding whether additional indexes will be necessary); *Miscavige*, 2 F.3d at 369 ("The plaintiff's early attempt in litigation of this kind to obtain a Vaughn Index...is inappropriate until the government has first had a chance to provide the court with the information necessary to make a decision on the applicable exemptions."). Therefore, any effort to compel an agency to prepare a Vaughn Index prior to the filing of the agency's dispositive motion is typically denied as premature.

As part of the 2007 FOIA amendments, the Office of Government Information Services (OGIS) was created to offer mediation services to resolve disputes between FOIA requesters and the Office of Disclosure as a non-exclusive alternative to litigation. The Office of Appeals is not a part of this mediation process. Using OGIS services does not affect your right to pursue litigation. If you are requesting access to your own records (which is considered a Privacy Act request), you should know that OGIS does not have the authority to handle requests made under the Privacy Act of 1974. If you disagree with the Appeals determination and wish to pursue mediation, you may contact OGIS in any of the following ways:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road - OGIS
College Park, MD 20740
E-mail: ogis@nara.gov
Web: <https://ogis.archives.gov>
Telephone: 202-741-5770
Facsimile: 202-741-5769
Toll-free: 1-877-684-6448

The FOIA requires us to advise you of the judicial remedies granted in the Act. You may file a complaint in the United States District Court for the District in which you reside, or have your principal place of business, or in which the agency records are located, or in the District of Columbia.

Sincerely,



P. Perez
Acting for

P. Perez
Appeals Team Manager